APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,769	07/01/2003	Christopher Che	021756-017600US	4994

			EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE __3__ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 April 2006*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   This communication is responsive to Applicant's Amendment, filed on 26 April

2006.

2.   The Amendment filed on 26 April 2006 does not add, cancel, or amend any

claims. Claims 1-29 are pending in this application. The applicant's arguments filed on

24 April 2006 have been fully considered but not persuasive. This office action is made

final.

Response to Arguments

3.   Referring to claims 1, 3-5, 7-18 and 20-28, the applicant alleges that Barrick and

Chen do not teach or suggest each element of these claims. The applicant argues that

only a calculated download time (Column 7 Lines 60-63; Column 9 Lines 1-9) is written

into an HTML header and sent in a subsequent request to a relay server (Page 9 of

Applicant' argument). The applicant alleges that *Barrick does not teach or suggest the*

depositing of times of generation, arrival, or departure in hidden HTML fields for a

request and that *Barrick does not teach or suggest transferring such times to one or*

more hidden data fields associated with an HTML based response for that request

(Page 9 of Applicant' argument).

The applicant additionally argues that Chen does not make up for these

deficiencies in Barrick. The applicant alleges that *Chen dose not teach or suggest*

depositing a time of generation, departure, or arrival of an HTML-bases request in one

more hidden data fields associated with an original HTML-based request (Page 9 of

Applicant' argument). The applicant continues to argue that *Chen does not teach transferring such times to one or more hidden data fields associated with an HTML-based response.*

To the contrary, Barrick does teach depositing a time of generation of HTML-based request in one or more hidden data fields. Particularly note Column 9 Lines 1-10, Figure 5, Column 7 Line 60-30 of Barrick's specification, which recites that *In one embodiment, the browser agent records of the time of the sending of the HTTP GET request as the start time* (Column 7 Line 60-30). Said start time is, indeed, the time of generation of the HTML request. Note that in HTML, GET request file is always hidden. In addition, Barrick teaches that said timing data is deposited into hidden data fields, i.e., *delta field,* as in *The delta field is sent as a variable DELTA in the HTTP GET request header* (Barrick, Column 9 Lines 1-10). Also, note Figure 5 of Barrick's specification, that is, *DELTA* as depicted in the figure. Said hidden field is associated with the HTML based request (Barrick Jr. Column 7, Line 43 through Column 8 Line 20).

To the contrary of the applicant's argument, Chen teaches a method and system for monitoring of network performance, wherein a special class of packet called "management packet" (Chen et al., Column 6 Line 55-60) is defined which includes an information field which is modified by all the nodes along a virtual connection (Chen et al., Column 6 Line 55 through Column 7 Line 5). Said management packets are used to collect performance parameters along any virtual connection, including packet delays at each intermediate node where arrival time and departure time at each node are used to calculate delay time at each and recorded into the packet (Chen et al., Figure 2 and

Column 7 Line 50 through Column 8 Line 54). Therefore, Chen teaches times of arrival, departure, and transfer (delay) which are recorded into a packet.

As such the applicant's arguments are invalid and rejection of independent claims 1, 7, 13, 20, 21, 22, 23 and 24 and any dependent claims which depend on these independent claims stand rejected.

Referring to claim 2, the applicant argues that Fish does not make up for deficiencies in Barrick and Chen. Such argument is inappropriate because Fish does provide features, which Barrick and Chen do not explicitly recite. Fish et al. teaches a method for writing debug data into hidden fields of HTML or XML document, which hidden until the user makes said hidden fields visible to be displayed (Fish et al., Paragraph 0023, 034, and 0038-0039). As such, rejection of claim 2 stands farm. Any claims, if any, which depend on claim 2 stand rejected.

Referring to claim 6 and 29, the applicant argues that Engel does not make up for the deficiencies of Barrick and Chen. To the contrary, Engel teaches features which Barrick and Chen do not disclose explicitly. Engel teaches a method for time synchronization across communication devices wherein local time of one or more nodes is synchronized by exchanging timing packets (Engel Paragraph 0017). Rejection of claim 6 and 29 is maintained.

Referring to claim 19, the applicant argues that Blythe does not make up for the deficiencies of Barrick and Chen, that is, at least one second server is an application server. Blythe et al. teaches the use of application servers in distributed environment (Blythe et al., Paragraph 0036 and 0054). Depositing a time of generation,

departure or arrival of an HTML-based request are taught by Barrick and Chen.

Rejection of claim 19 stands firm.

As such, rejections with respect to claims 1-29 are valid, appropriate, and

maintained.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

5.   Claim 1, 3-5, 7-18, and 20-28 is rejected under 35 U.S.C. 103(a) as being

unpatentable over Barrick Jr. et al. (hereinafter "Barrick") (U.S. Patent Number

6625647) in view of Chen et al. (hereinafter "Chen") (U.S. Patent Number 5793976).

Referring to claim 1, Barrick Jr. et al. is directed to a system and method for

assembling timing data in a multi-layer server environment, comprising:

"generating an HTML request" (Barrick Jr. et al., Column 4, Line 41-65);

"depositing a time of generation of the HTML based request in one or more

hidden data fields associated with the HTML based request" " (Column 9 Line 1-10

Delta Field, Figure 5: *Delta Field 502*, and Column 7, Line 43 through Column 8 Line

20);

"forwarding the HTML based request to one or more servers" (Column 7 Line 15-

22);

"generating an HTML based response" (Barrick Jr. et al., Column 7 56-66);

"transferring" and "forwarding" (Barrick Jr. et al., Column 7 56-66)

Barrick Jr. et al. teaches that the response is sent back from the server to the

browser agent, located at the client machine, which calculates the round-trip time based

on the request time and arrival time at the browser (Barrick Jr. et al., Column 7 56-66).

Barrick Jr. et al. does not explicitly disclose the limitations:

""the arrival times", and "departure time".

Chen teaches the limitations:

"the arrival times", and "departure time" (Chen et al., Figure 2 and Column 7 Line

50 through Column 8 Line 54). Chen et al. teaches a method and system for monitoring

of network performance, wherein a special class of packet called "management packet" (Chen et al., Column 6 Line 55-60) is defined which includes an information field which is modified by all the nodes along a virtual connection (Chen et al., Column 6 Line 55 through Column 7 Line 5). Said management packets are used to collect performance parameters along any virtual connection, including packet delays at each intermediate node where arrival time and departure time at each node are used to calculate delay time at each and recorded into the packet (Chen et al., Figure 2 and Column 7 Line 50 through Column 8 Line 54).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of acquiring arrival and depart time at each node (servers or switches or routers) as taught by Chen et al. to the system and method taught by Barrick et al. so that, when an HTML based response is generated in the resultant system and method, arrival times provided by one or more servers will be transferred to one or more hidden data fields and the HTML based response will be forwarded to one or more servers that deposit a departure time in the one or more hidden data fields. One would have been motivated to do so in order that "the information field of a management cell is modified by all the network nodes along a virtual connection, not just by the virtual end points" (Chen et al., Column 6 Line 65 through Column 7 Line 5).

Claim 7,8,9,13, 21, 22, 23, 24, and 25 are rejected on the same basis as claim 1.

Referring to claim 3, Barrick teaches the limitation:

"storing the arrival times and the departure times in the hidden data fields in the HTML based response in a database" (Column 5 Line 1-10 and Column 10 Line 52-58). Barrick teaches the storing of the arrival times and departure times in the hidden data fields in the HTML based response in a database (Barrick Jr. et al., Column 5 Line 1-10 and Column 10 Line 52-58).

Claim 10, 11, 12, 14, and 15, and 26 are rejected on the same basis as claim 3.

Referring to claim 4, Barrick teaches the limitation:

"performing analysis on the arrival times and the departure time in the database" (Barrick Jr. et al., Column 10 Line 55-61).

Claim 27 is rejected on the same basis as claim 4.

Referring to claim 5, Chen teaches the limitation:

"at least one of the arrival time and the departure time is based on a local time associated with one or more servers" (Column 7 Line 17-27, i.e., *local measurement of packet delay*).

Claim 28 is rejected on the same basis as claim 5.

Referring to claim claims 16 and 17, Official Notice taken that the use of internal clock for keeping local time is notoriously well known in the art. Therefore, servers of

claim 16 and 17 are inherently equipped with internal clocks simply because those are

computers.

Referring to claim 18, Barrick is directed to the limitation:

"at least one first server is a web server" (Column 4 Line 58-60 , i.e., *web server*

104, and Figure 1C: *web server 104*).

Claim 20 is rejected on the same basis as claim 1. Barrick in view of Chen as

discussed above in regard to claim 1 discloses the invention as claimed. Since the

system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim

1 above generates arrival times and departure times, HTML based request and

response, arrival time generator and departure time generator inherently exist in the

said system and method.

6.   Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in

view of Chen and further in view of Fish et al. (hereinafter "Fish") (U.S. Patent

Application Publication Number 2004/0111394).

Referring to claim 2, Barrick in view of Chen does not explicitly disclose the

limitation:

"displaying the one or more hidden data fields to a user".

Fish teaches the limitation:

"displaying the one or more hidden data fields to a user" (Paragraph 0023, 034, and 0038-0039). Fish teaches a method for writing debug data into hidden fields of HTML or XML document, which hidden until the user makes said hidden fields visible to be displayed (Paragraph 0023, 034, and 0038-0039).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of displaying hidden data fields as taught by Fish et al. to the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 1 above so that, the method of claim 1 would further comprise displaying the one or more hidden data fields to a user. One would have been motivated to do so in order to simply allow the user analyze the hidden data instantly rather than storing the hidden data in a database.

7.   Claim 6 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in view of Chen and further in view of Engel (hereinafter "Engel") (U.S. Patent Application Publication Number 2004/0246996).

Referring to claim 6, Barrick in view of Chen does not explicitly recite the limitation:

"wherein the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers".

Engel teaches the limitation:

"wherein the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers" (Paragraph 0017). Engel teaches a

method for time synchronization across communication devices wherein local time of

one or more nodes is synchronized by exchanging timing packets (Engel Paragraph

0017).

At the time the invention was made, it would have been obvious to a person of

ordinary skill in the art to add the feature of synchronizing local time among nodes as

taught by Engel to the system and method taught by Barrick Jr. et al. in view of Chen et

al. as applied to claim 5 so that, in the resultant system and method, local time of at

least one of the one or more servers will be synchronized with at least one other of the

one or more servers. One would have been motivated to do so in order to determine

delay time between nodes (Engel Paragraph 0003).

Claim 29 is rejected on the same basis as claim 6.

8.   Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick

in view of Chen and further in view of Blythe et al. (hereinafter "Blythe") (U.S. Patent

Application Publication Number 2004/0139433).

Referring to claim 19, Barrick in view of Chen does not explicitly teach the

limitation:

"at least one second server is an application server".

Blythe teaches the limitation:

"at least one second server is an application server" (Paragraph 0036 and 0054).

Blythe et al. teaches the use of application servers in distributed environment (Blythe et

al., Paragraph 0036 and 0054).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the use of application servers to the method and system of Barrick Jr. et al. in view of Chen et al. as applied to claim 13 so that said system and method would comprise at least one second server which is an application server. One would have been motivated to do so in order to simply measure performance metrics of such servers.

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Contact Information

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Myint whose telephone number is (571) 272-5629. The examiner can normally be reached on 8:30AM-5:30PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-5629.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cam Y Truong
Primary Examiner